

United States
10
Circuit Court of Appeals
For the Ninth Circuit.

JOHANNA NELSON,

Plaintiff in Error,

vs.

W. W. CASEY, HENRY SHATTUCK and ALLEN
SHATTUCK,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

FILED
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CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

RODEN & DAWES, Juneau, Alaska,
Attorneys for Plaintiff in Error.

H. L. FAULKNER, Juneau, Alaska,
Attorney for Defendants in Error.

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and
ALLAN SHATTUCK,

Defendants.

Complaint.

Plaintiff herein complains of defendants, and for her cause of action alleges:

I.

That plaintiff is, and ever since the 4th day of October, 1915, has been, the owner of Lots Nine (9) and Ten (10), in Block Two Hundred Thirteen (213) of Casey-Shattuck Addition to the city of Juneau according to the recorded plat thereof; that said lots on and prior to the 26th day of September, 1918, were the place of residence and abode for plaintiff and her family; that plaintiff had on such lots on and prior to the said 26th day of September, 1918, two houses built for and used as residences, and the grounds about which and upon said lots were beautified with gardens and improved with the planting

of berry bushes and the erection and maintenance of chicken-houses and chicken fences, and the said lots were enclosed with picket fence; that said houses were well stocked with household furniture, utensils, stoves, beds, bedding and kindred necessities and luxuries usually found in well-equipped homes; that said lots and improvements thereon, including said houses, were on the said 26th day of September, 1918, of the value of Six Thousand Five Hundred Dollars (\$6,500.00), and the furniture and [1*] other personal property above referred to in said houses were of the value of Two Thousand Five Hundred Dollars (\$2,500.00).

II.

That a certain stream known as Gold Creek is a mountain stream, both sides of which, as well as both sides of the various tributaries of which, consist of, or are formed by very steep mountains rising to an average elevation of some three thousand (3,000) feet above the creek-bed, by reason of which fact, heavy rains would, and actually did, cause in said creek, periodically, sudden freshets of great magnitude and violence; that that part of the city of Juneau known as Casey-Shattuck Addition consists principally of a delta of low ground formed by said Gold Creek and sloping towards the southwest and over said delta and flowed through numerous channels from the narrow gorge immediately to the north of said Casey-Shattuck Addition, and that, until the course of said Gold Creek was obstructed and changed by defendants, as hereinafter set out, the said stream

*Page-number appearing at foot of page of original certified Transcript of Record.

flowed in a general southwesterly direction over said delta and, in case of freshets, said stream had opportunity to readily spread out, and did spread out, over said delta and flowed through numerous channels westerly of and away from plaintiff's said premises.

III.

That heretofore, to wit, during the year 1914, the defendants herein, for their own use and benefit, and for their own purposes and for the purpose of reclaiming for themselves from the waters of Gold Creek certain tracts of land on the said delta and in the said Casey-Shattuck Addition, and for the purpose of making such lands suitable and marketable for residence purposes, undertook to change, and did change, the [2] course of said stream, below said gorge and where it flowed over said delta, from a southwesterly to a southerly direction, and to a position where it was by said change caused to flow adjacent to the aforementioned lots of this plaintiff and that at the time and by the same means, and for the same purpose, defendants undertook to, and did, confine the course of said stream to a channel too narrow and too shallow to accommodate and convey safely all the water which might and would flow through said stream during the periods of great precipitation of rain and great freshets.

IV.

That for the purpose of so changing and confining the channel of said stream, defendants erected bulkheads or obstructions in and across the old channel of said stream so as to divert the water away from the old channel and force the water of said stream

to flow in a new channel and in a southerly direction, adjacent to plaintiff's lots above described, and for the purpose aforesaid defendants undertook to erect, and did erect on both sides of the new channel, bulkheads or embankments; that the embankments so erected by defendants on the easterly side of said new channel and at a point where said new channel runs adjacent to plaintiff's lots, and for several hundred feet northerly therefrom, were unskillfully and negligently constructed too weak and inadequate to withstand the force of the water which might and would likely come down said channel during freshets or during such periods of heavy downpour of rain on the watershed of said stream, as from time to time naturally and generally occurred and might naturally be expected to occur in the future. That by reason of said facts plaintiff's property aforesaid was by defendants' said wrongful acts exposed to the danger of [3] being washed away by the waters thrown or forced against said property by reason of the various embankments or bulkheads erected by defendants across and in the old channel of said stream to prevent said stream from spreading in the manner it did before said obstructions, embankments or bulkheads were erected as above described.

V.

That at the time plaintiff became the owner of said lots, and ever after, she was ignorant of the change of the course of the said stream and was ignorant of the fact that prior to the erection and maintenance of said obstructions and embankments by de-

fendants the natural course of said Gold Creek was at other and different places and that during freshets the said stream naturally spread over a large area and flowed through several channels, as above set out; that plaintiff was at all times herein mentioned ignorant of the weak and inadequate condition of the said artificial embankments adjacent to her said lots and to the northerly therefrom and of the negligent condition in which the same had been constructed and maintained, and knew nothing of the danger to which she, her family and property were subjected by reason of the defendants' said negligent and wrongful acts above described.

VI.

That defendants at all times herein mentioned knew, or by the exercise of ordinary and reasonable care and intelligence would have known, that Gold Creek was a mountain stream subject to violent freshets from time to time; knew that the inevitable effect of the bulkheads or embankments erected by defendants across the old channel and on the westerly side of said stream was to obstruct the natural course and tendency of the water of said stream aforesaid and that said bulkheads or [4] embankments would, and did, divert and force the waters of said stream, with great violence, against plaintiff's property aforesaid; that the said new channel constructed by defendants was too small to accommodate and safely convey the water of said stream during the periodical freshets to which said stream was subject; that the aforesaid bulkhead or embankment on the easterly side of said channel, adjacent to plaintiff's

property and for several hundred feet northerly therefrom, was, at all times herein mentioned, too weak, flimsy and inadequate to withstand the force of the water in said stream which would naturally be thrown against it, in case of freshets, after the said bulkhead or embankments in the old channel and on the westerly side of said new channel were so erected by defendants as aforesaid; that by reason of said facts above set out, plaintiff's said property was at all times exposed to the danger of being washed away by freshets in said stream; and plaintiff alleges that defendants were grossly negligent in this, that they failed to construct and maintain on the easterly side of said stream adjacent to plaintiff's said property and for several hundred feet northerly therefrom, a bulkhead or embankment adequate to protect plaintiff's said property against any water that would be forced against said bulkhead or embankment by the said change in the course of said stream or by the erection or maintenance of a bulkhead, embankments or obstructions in and across the old channel of said stream, preventing said stream, as aforesaid, from spreading in a westerly direction in event of freshets in the same manner that the stream was wont to do before the said change in the course of said stream was caused by defendants as aforesaid.

VII.

That heretofore, to wit, on the 26th day of September, 1918, while plaintiff was such owner of said property above described and while she was residing thereon with her family, [5] a downpour of rain

occurred which caused a freshet in said Gold Creek, and that then and there, by reason of the negligent and wrongful acts of defendants above set out, the waters in said stream were prevented from spreading freely in a southwesterly direction and were forced up against the said artificial and inadequate embankments adjacent to plaintiff's said lots and northerly therefrom, which embankments, by reason of said weakness and inadequacy, gave way under the force of said waters, which latter then and there necessarily, by reason of defendants said wrongful acts above described, washed away both of plaintiff's said houses above described and destroyed all of the improvements on said lots and washed away all soil therefrom and left nothing but a bed of boulders, establishing a new stream where plaintiff's home, up to the said 26th day of September, 1918, had been, thereby and thus completely destroying the value of said real property, with all of the appurtenances thereunto belonging; that much of plaintiff's personal property in said residences was also then and there wholly destroyed by the said action of the water, and in the effort to save the furnishings and equipment of said residences from complete destruction what was thus saved was greatly damaged; that said injury and damage to plaintiff's personal property in said residences was and is Two Thousand Twenty-four Dollars (\$2,024).

VIII.

That, by reason of the destruction of her home and property by the wrongful acts of defendants in the manner and as above alleged, plaintiff became,

and was, greatly perturbed for the safety of herself and family and suffered great mental anguish, and was injured and damaged in her person and property [6] in the sum of Nine Thousand Dollars (\$9,000.00), all due to, and caused by, the negligent and wrongful acts of defendants above described.

WHEREFORE, plaintiff demands judgment against the defendants, and each of them, in the sum of Nine Thousand Dollars (\$9,000.00), together with her costs and disbursements herein.

JOHN RUSTGARD,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Johanna Nelson, being first duly sworn, deposes and says: That she is the plaintiff named in the above-entitled action; that she has read the foregoing complaint, knows the contents thereof, and that she believes the same to be true.

JOHANNA NELSON.

Subscribed and sworn to before me this 21st day of July, 1920.

[Notarial Seal]

JOHN RUSTGARD,
Notary Public for Alaska.

My commission expires Oct. 8, 1922.

Filed in the District Court, District of Alaska,
First Division. Jul. 21, 1920. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [7]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and AL-
LEN SHATTUCK,

Defendants.

Demurrer.

Come now the defendants above named by their attorney, H. L. Faulkner, and demur to the complaint of the plaintiff on file herein, upon the ground that said complaint does not state facts sufficient to constitute a cause of action.

H. L. FAULKNER,
Attorney for Defendants.

Filed in the District Court, District of Alaska,
First Division. Aug. 19, 1920. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [8]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and AL-
LEN SHATTUCK,

Defendants.

**Order Sustaining Demurrer and Fixing Time of
Amendment.**

This matter coming on regularly to be heard upon the demurrer of the defendants above named to the complaint of the plaintiff, and the plaintiff being represented by her counsel, John Rustgard, and the defendants by their counsel, H. L. Faulkner, and the matter having been heretofore argued and submitted to the Court,—

IT IS HEREBY ORDERED that the said demurrer be, and the same is hereby sustained, and the plaintiff is allowed until October 20th in which to amend her complaint in accordance with the opinion of the Court filed herein on October 2, 1920.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska,
First Division. Oct. 4, 1920. J. W. Bell, Clerk.
By ————, Deputy.

Entered Court Journal No. Q, page 90. [9]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and AL-
LAN SHATTUCK,

Defendants.

Ruling on Demurrer.

The complaint in this case alleges, (1) that on and at all times since the 4th day of October, 1915, plaintiff has been the owner of certain property in what is known as the Casey-Shattuck addition to the city of Juneau; (2) that during the year 1914 the defendants "for their own benefit and for their own purposes" changed the course of Gold Creek thereby causing said creek to flow adjacent to the said lots of the plaintiff; (3) that said change was accomplished by the building of an artificial channel for said Gold Creek, which said artificial channel was negligently constructed and of insufficient capacity; (4) that on the 26th day of September, 1918, a downpour of rain occurred which caused a freshet in said Gold Creek, and "that then and there, by reason of the negligent and wrongful acts of defendants above set out, the waters in said stream were prevented from spreading freely in a south-westerly direction and were forced up against the

said artificial and inadequate embankments adjacent to plaintiff's said lots and northerly therefrom, which embankments, by reason of said weakness and inadequacy, gave way under the force of said waters, which latter then and there necessarily, by reason of defendants' wrongful acts above described, washed away both of plaintiff's said houses," and did the damage sued for in the complaint.

To this complaint a demurrer was interposed on the grounds [10] that the said complaint did not state facts sufficient to constitute a cause of action. The demurrant makes the point that as it appears from said complaint that the embankments were erected in the year 1914, and as defendant did not purchase her property until October, 1915, and as it further appears that the damage was not done until 1918, and as there is no allegation whatsoever that after the course of the creek was changed by the embankments so alleged to have been erected the defendants did anything whatsoever towards the operation, repair or maintenance of the same, the complaint states no facts upon which a liability could be predicated.

It would seem that the point is well taken. For aught that appears in the complaint the defendants may in the year 1914 have changed the course of the creek for purposes of their own, and those purposes may have been accomplished and the defendants have lost all interest in the creek or any property adjacent thereto, or to be benefited thereby. Surely they would not be liable forever afterwards because on a certain date they changed the course

of a creek. It seems to me that they would be liable only during such time as they were maintaining the obstructions complained of.

Plaintiff as meeting this contention of the demurrant cites the case of Arave vs. Idaho Canal Co., 46 Pac. 1024. A casual examination of that case will show that it was a suit for damages caused by an obstruction coupled with a prayer for an injunction "that the defendant be perpetually restrained and enjoined from maintaining said canal." Manifestly, then, there must have been an allegation in the complaint that the plaintiffs not only had maintained the canal complained of, but were still maintaining it. Counsel calls attention to the following language in the decision:

"Appellant's claim that the corporation defendant is not called upon to consider or respect the rights of settlers along the line of its canal, who have made such settlement subsequent to the location of the canal, is not only unsupported by law, but is repugnant to every principle of equity and good conscience. [11]

The doctrine there announced may be fully conceded, and yet such language is very far from declaring that a company or person which has not "maintained" an obstruction is liable to settlers along the canal.

The case of Free vs. Parr Shoals Power Co., 97 S. E. 243, is also cited by counsel for the plaintiff. An examination of that case shows that it was alleged in the complaint "that defendant was negligent in the construction *and operation* of said dam."

The case of Beauchamp vs. Taylor, 111 S. W. 609, is also relied upon by counsel for plaintiff, but it seems to me that that case is an authority more against the plaintiff than in her favor, for it is said in the opinion:

“Defendants demurred to the evidence, and here insist that their demurrer should have been given. Their contention is that plaintiff purchased the land with knowledge that defendants had constructed and were maintaining the levee, and therefore purchased it burdened with the levee. If the levee was not a lawful structure—that is, if it obstructed the flow of water in a natural channel—it was a nuisance, and while plaintiff cannot sue and recover for the erection of the nuisance, he is clearly entitled to recover any damage he may have sustained *by reason of its maintenance.*”

The statement of facts of the case shows that the plaintiff alleged that at the time of the injury the defendants in the case were still maintaining the levee.

If the defendants can be said to have been maintaining, at the time of the injury, the obstructions which are alleged to have caused the injury, it will be very easy to insert in the complaint a statement to that effect, but in the absence of such statement I do not think the complaint states facts sufficient.

The demurrer therefore will be sustained with leave to the plaintiff to amend her complaint.

Filed in the District Court, District of Alaska,
First Division. Oct. 2. 1920. J. W. Bell, Clerk.
By ———, Deputy. [12]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and AL-
LAN SHATTUCK,

Defendants.

Amended Complaint.

Plaintiff herein complains of defendants, and for
her cause of action alleges:

I.

That plaintiff is, and ever since the 4th day of
October, 1915, has been, the owner of Lots Nine (9)
and Ten (10), in Block Two Hundred Thirteen
(213) of Casey-Shattuck Addition to the City of
Juneau according to the recorded plat thereof; that
said lots on and prior to the 26th day of September,
1918, were the place of residence and abode for
plaintiff and her family; that plaintiff had on such
lots on and prior to the said 26th day of September,
1918, two houses built for and used as residences,
and the grounds about which and upon said lots
were beautified with gardens and improved with the

planting of berry bushes and the erection and maintenance of chicken-houses and chicken fences, and the said lots were enclosed with picket fence; that said houses were well stocked with household furniture, utensils, stoves, beds, bedding and kindred necessities and luxuries usually found in well-equipped homes; that said lots and improvements thereon, including said houses, were on the said 26th day of September, 1918, of the value of Six Thousand Five Hundred Dollars (\$6,500.00), and the furniture and other personal property above referred to in said houses [13] were of the value of Two Thousand Five Hundred Dollars (\$2500).

II.

That a certain stream known as Gold Creek is a mountain stream, both sides of which, as well as both sides of the various tributaries of which, consist of, or are formed by very steep mountains rising to an average elevation of some three thousand (3,000) feet above the creek-bed, by reason of which fact, heavy rains would, and actually did, cause in said creek, periodically, sudden freshets of great magnitude and violence; that that part of the city of Juneau known as Casey-Shattuck Addition consists principally of a delta of low ground formed by said Gold Creek and sloping towards the southwest and over which said Gold Creek flowed after it emerged from the narrow gorge immediately to the north of said Casey-Shattuck Addition, and that, until the course of said Gold Creek was obstructed and changed by defendants, as hereinafter set out, the said stream flowed in a general southwesterly

direction over said delta and, in case of freshets, said stream had opportunity to readily spread out, and did spread out, over said delta and flowed through numerous channels westerly of and away from plaintiff's said premises.

III.

That heretofore, to wit, during the year 1914, the defendants herein, for their own use and benefit, and for their own purposes and for the purpose of reclaiming for themselves from the waters of Gold Creek certain tracts of land on the said delta and in the said Casey-Shattuck Addition, and for the purpose of making such lands suitable and marketable for residence purposes, undertook to change, and did change, the [14] course of said stream, below said gorge and where it flowed over said delta, from a southwesterly to a southerly direction, and to a position where it was by said change caused to flow adjacent to the aforementioned lots of this plaintiff, and that at the time and by the same means, and for the same purpose, defendants undertook to, and did, confine the course of said stream to a channel too narrow and too shallow to accommodate and convey safely all the water which might and would flow through said stream during the periods of great precipitation of rain and great freshets.

IV.

That for the purpose of so changing and confining the channel of said stream, defendants erected bulkheads or obstructions in and across the old channel of said stream so as to divert the water

away from the old channel and force the water of said stream to flow in a new channel and in a southerly direction, adjacent to plaintiff's lots above described, and for the purpose aforesaid defendants undertook to erect, and did erect on both sides of the new channel, bulkheads or embankments; that the embankments so erected by defendants on the easterly side of said new channel and at a point where said new channel runs adjacent to plaintiff's lots, and for several hundred feet northerly therefrom, were unskillfully and negligently constructed too weak and inadequate to withstand the force of the water which might and would likely come down said channel during freshets or during such periods of heavy downpour of rain on the watershed of said stream, as from time to time naturally and generally occurred and might naturally be expected to occur in the future. That by reason of said facts plaintiff's property aforesaid was by defendants' said wrongful acts exposed to the danger of [15] being washed away by the waters thrown or forced against said property by reason of the various embankments or bulkheads erected by defendants across and in the old channel of said stream to prevent said stream from spreading in the manner it did before said obstructions, embankments or bulkheads were erected as above described.

V.

That at the time plaintiff became the owner of said lots, and ever after, she was ignorant of the change of the course of the said stream and was ignorant of the fact that prior to the erection and

maintenance of said obstructions and embankments by defendants the natural course of said Gold Creek was at other and different places and that during freshets the said stream naturally spread over a large area and flowed through several channels, as above set out; that plaintiff was at all times herein mentioned ignorant of the weak and inadequate condition of the said artificial embankments adjacent to her said lots and to the northerly therefrom and of the negligent condition in which the same had been constructed and maintained, and knew nothing of the danger to which she, her family and property were subjected by reason of the defendants' said negligent and wrongful acts above described.

VI.

That defendants at all times herein mentioned knew, or by the exercise of ordinary and reasonable care and intelligence would have known, that Gold Creek was a mountain stream subject to violent freshets from time to time; knew that the inevitable effect of the bulkheads or embankments erected by defendants across the old channel and on the westerly side of said stream was to obstruct the natural course and tendency of the water of said stream aforesaid and that said bulkheads or [16] embankments would, and did, divert and force the waters of said stream, with great violence, against plaintiff's property aforesaid; that the said new channel constructed by defendants was too small to accommodate and safely convey the water of said stream during the periodical freshets to which said

stream was subject; that the aforesaid bulkhead or embankment on the easterly side of said channel, adjacent to plaintiff's property and for several hundred feet northerly therefrom, was, at all times herein mentioned, too weak, flimsy and inadequate to withstand the force of the water in said stream which would naturally be thrown against it, in case of freshets, after the said bulkhead or embankments in the old channel and on the westerly side of said new channel were so erected by defendants as aforesaid; that by reason of said facts above set out, plaintiff's said property was at all times exposed to the danger of being washed away by freshets in said stream; and plaintiff alleges that defendants were grossly negligent in this, that they failed to construct and maintain on the easterly side of said stream adjacent to plaintiff's said property and for several hundred feet northerly therefrom, a bulkhead or embankment adequate to protect plaintiff's said property against any water that would be forced against said bulkhead or embankment by the said change in the course of said stream or by the erection or maintenance of a bulkhead, embankments or obstructions in and across the old channel of said stream, preventing said stream, as aforesaid, from spreading in a westerly direction in event of freshets in the same manner that the said stream was wont to do before the said change in the course of said stream was caused by defendants as aforesaid.

VII.

That prior to, at and after the turning of the

channel of said stream and the erection of said bulkheads or embankments aforesaid, defendants surveyed and platted the lands and premises [17] on both sides of said new channel and upon and over the said delta into building lots, streets and avenues, dedicated the said streets and avenues to public use as such and offered said lots for sale to the public, defendants being then and there the owners of said premises; that at the time of the erection of said bulkheads or embankments defendants sold a large number of said lots to many and diverse individuals, and for a long time thereafter and until the 26th day of September, 1918, did continue to offer for sale to the public the remainder of said tracts so surveyed and platted and did continue to sell lots from said tracts to divers and sundry individuals; and that before the said 26th day of September, 1918, a large number of said lots had been so purchased and large sums of money had been expended by said purchasers, not only in the purchase of said lots but in the erection and maintenance of residences, store buildings, gardens and other valuable and permanent improvements upon said lots; and that at great expense streets had been constructed and sidewalks built by the city of Juneau, a municipal corporation, upon said premises so dedicated as aforesaid, and up to and on the said 26th day of September were maintained by the said city at great expense; that a great many of said improvements had been so constructed and were so maintained on that portion of said delta on which, prior to the erection of said bulkheads

and embankments, the waters of said stream went to flow and upon premises reclaimed by means of said bulkheads from the waters of said stream; that those who purchased said lots and constructed and or maintained said improvements did so on the assumption and under the belief, as defendants at all times well knew, that said bulkheads were permanent and adequate and would be maintained as such by defendants; that in case the said bulkhead on the westerly side of said new channel should be removed or should give way, large tracts of the premises so sold [18] and improved as aforesaid, would be inundated, destroyed and rendered useless, as defendants also at all times well knew; that by reason of said facts above set out it was the duty of defendants to at all times keep and maintain said bulkheads or embankments in good condition and repair, and in every way adequate to keep and restrain the waters of said stream within the said new channel and prevent said waters from flowing on or in any manner injuring the said adjoining premises or any premises reclaimed as aforesaid from the waters of said stream as aforesaid.

VIII.

That heretofore, to wit, on the 26th day of September, 1918, while plaintiff was such owner of said property above described and while she was residing thereon with her family, a downpour of rain occurred which caused a freshet in said Gold Creek, and that then and there, by reason of the negligent and wrongful acts of defendants above set out, the waters in said stream were prevented from spread-

ing freely in a southwesterly direction and were forced up against the said artificial and inadequate embankments adjacent to plaintiff's said lots and northerly therefrom, which embankments, by reason of said weakness and inadequacy, gave way under the force of said waters, which latter then and there necessarily, by reason of defendants' said wrongful acts above described, washed away both of plaintiff's said houses above described and destroyed all the improvements on said lots and washed away all soil therefrom and left nothing but a bed of boulders, establishing a new stream where plaintiff's home, up to the said 26th day of September, 1918, had been, thereby and thus completely destroying the value of said real property, with all of the appurtenances thereunto belonging; that much of plaintiff's personal property in said residences was also then and there wholly destroyed by the said action of the water, and in the effort to save the furnishings and equipment of said residences from complete [19] destruction what was thus saved was greatly damaged; that said injury and damage to plaintiff's personal property in said residences was and is Two Thousand Twenty-four Dollars (\$2,024).

IX.

That, by reason of the destruction of her home and property by the wrongful acts of defendants in the manner and as above alleged, plaintiff became, and was, greatly perturbed for the safety of herself and family and suffered great mental anguish, and was injured and damaged in her person and

property in the sum of Nine Thousand Dollars (\$9,000.00), all due to, and caused by, the negligent and wrongful acts of defendants above described.

WHEREFORE, plaintiff demands judgment against the defendants, and each of them, in the sum of Nine Thousand Dollars (\$9,000.00), together with her costs and disbursements herein.

JOHN RUSTGARD,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Johanna Nelson, being first duly sworn, deposes and says: That she is the plaintiff named in the above-entitled action; that she has read the foregoing amended complaint, knows the contents thereof, and that she believes the same to be true.

JOHANNA NELSON.

Subscribed and sworn to before me this 5th day of November, 1920.

[Notarial Seal] JOHN RUSTGARD,
Notary Public for Alaska.

My commission expires Oct. 8th, 1922.

Copy of foregoing amended complaint received this 8th day of Nov., 1920.

H. L. FAULKNER,
Atty. for Defts.

Filed in the District Court, District of Alaska,
First Division. Nov. 8, 1920. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [20]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and
ALLEN SHATTUCK,

Defendants.

Demurrer to Amended Complaint.

Come now the defendants above named, by their attorney, H. L. Faulkner, and demur to the amended complaint of the plaintiff on file herein, on the ground that the same does not state facts sufficient to constitute a cause of action against the defendants, or either of them.

H. L. FAULKNER,

Attorney for Defendant.

Copy received Nov. 12, 1920.

JOHN RUSTGARD,

Atty. for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. Nov. 12, 1920. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [21]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and
ALLAN SHATTUCK,

Defendants.

Order Sustaining Demurrer.

This cause came duly on to be heard before the above-entitled court at Juneau, Alaska, on the 24th day of February, 1921, upon a general demurrer by defendants to plaintiff's amended complaint, John Rustgard, Esquire, appearing for plaintiff, and H. L. Faulkner, Esquire, appearing for defendants; and the cause having been duly submitted to the Court, and the Court having considered the same, and being duly advised in the premises, announced in open court on the 5th day of April, 1921, that the Court sustained the said demurrer;

NOW, THEREFORE, it is ORDERED that the defendants' general demurrer to plaintiff's amended complaint be and the same hereby is sustained, and that this order be entered *nunc pro tunc* as of April 5th, 1921.

Done in open court, this 11th day of May, 1921.

ROBERT W. JENNINGS,
District Judge.

O. K.—H. L. FAULKNER,
Atty. for Defendants.

Filed in the District Court, District of Alaska,
First Division. May 11, 1921. J. W. Bell, Clerk.
By V. F. Pugh, Deputy.

Entered Court Journal No. Q, page 262. [22]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK and
ALLEN SHATTUCK,

Defendants.

Judgment.

The above cause having duly come on to be heard before the above-entitled court on the 24th day of February, 1921, upon a general demurrer by defendants to plaintiff's amended complaint, and the Court having on the 5th day of April, 1921, sustained the said demurrer and entered its order accordingly, and no further or other pleading having been filed by the plaintiff, and the plaintiff having, for the purpose of affording her relief by way of a

writ of error, moved that judgment be entered herein upon the pleadings;

NOW, THEREFORE, it is ADJUDGED that plaintiff take nothing by this action, and that the defendants have their costs and disbursements herein to be taxed by the clerk of this court.

Done in open court at Juneau, Alaska, this 11th day of May, 1921.

ROBERT W. JENNINGS,
District Judge.

O. K.—H. L. FAULKNER,
Atty. for Defendants.

Filed in the District Court, District of Alaska, First Division. May 11, 1921. J. W. Bell, Clerk. By V. F. Pugh, Deputy.

Entered Court Journal No. Q, page 263. [23]

United States Circuit Court of Appeals for the Ninth Circuit, Holden at San Francisco, California.

JOHANNA NELSON,

Plaintiff in Error,

vs.

W. W. CASEY, HENRY SHATTUCK and
ALLEN SHATTUCK,

Defendants in Error.

Assignment of Errors.

Comes now the above-named plaintiff in error, Johanna Nelson, and assigns the following errors

committed by the Court in the above-entitled cause and in the rendition of the judgment herein, the errors so assigned being the errors which the plaintiff in error intends to urge before the United States Circuit Court of Appeals of the Ninth Circuit, and are the errors relied upon for a reversal of the judgment herein.

ERROR NUMBER ONE.

The District Court for the Territory of Alaska, Division Number One, erred in sustaining the defendants' demurrer to plaintiff's complaint.

ERROR NUMBER TWO.

The District Court for the Territory of Alaska, Division Number One, erred in sustaining the defendants' demurrer to plaintiff's amended complaint.

ERROR NUMBER THREE.

The Court erred in holding and ruling that the plaintiff's complaint did not state facts sufficient to constitute a cause of action.

ERROR NUMBER FOUR.

The Court erred in holding and ruling that plaintiff's amended complaint did not state facts sufficient to constitute a cause of action.

ERROR NUMBER FIVE.

The Court erred in adjudging that plaintiff take nothing by this action and that defendants have their costs and disbursements therein. [24]

ERROR NUMBER SIX.

The Court erred in entering judgment herein in favor of defendants and against plaintiff.

WHEREFORE, the above-named plaintiff in error prays that the judgment herein entered on the 11th day of May, 1921, be reversed and that she have her costs and disbursements herein.

RODEN & DAWES,

Attorneys for Plaintiff in Error.

Copy received May 13, 1921.

H. L. FAULKNER,

Atty. for Defendants.

Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy. [25]

United States Circuit Court of Appeals for the Ninth Circuit, Holden at San Francisco, California.

JOHANNA NELSON,

Plaintiff in Error,

vs.

W. W. CASEY, HENRY SHATTUCK, and
ALLAN SHATTUCK,

Defendants in Error.

**Petition for Writ of Error and Order Allowing
the Same.**

To the Honorable ROBERT W. JENNINGS, Judge
of the District Court for the Territory of Alaska,
Division Number One:

Comes now the above-named Johanna Nelson, plaintiff in error herein, and complains that in the record and proceedings had in the District Court

for the Territory of Alaska, Division Number One, in the case of Johanna Nelson, Plaintiff, vs. W. W. Casey, Henry Shattuck, and Allan Shattuck, Defendants, and also in the rendition of the judgment in said cause in the District Court for the Territory of Alaska, Division Number One, on the 11th day of May, 1921, wherein the District Court of the Territory of Alaska adjudged that said plaintiff, Johanna Nelson, take nothing by said action and that the above-named defendants have their costs therein, manifest error hath happened, to the great damage of the said Johanna Nelson, as will more fully appear from the assignment of errors filed herewith;

WHEREFORE, Johanna Nelson prays for the allowance of a writ of error and for an order fixing the amount of the [26] bond in said cause, and for such other order and process as may cause the said error to be corrected by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated the 14th day of May, A. D. 1921.

RODEN & DAWES,

Attorneys for Plaintiff in Error.

The above petition for writ of error is allowed, and the bond fixed at Two Hundred and Fifty Dollars (\$250.00), to be approved by the clerk of the above-entitled court.

And it is further ordered, that this cause be heard by the United States Circuit Court of Appeals of the Ninth Circuit in the city of Seattle at its session in that city in the month of September, A. D. 1921.

Dated the 14th day of May, A. D. 1921.

ROBERT W. JENNINGS,
Judge.

Service admitted May 13, 1921.

H. L. FAULKNER,
Atty. for Defendants.

Filed in the District Court, District of Alaska,
First Division. May 14, 1921. J. W. Bell, Clerk.
By L. E. Spray, Deputy.

Entered Court Journal No. Q. page 275. [27]

United States Circuit Court of Appeals for the Ninth
Circuit, Holden at San Francisco, California.

JOHANNA NELSON,

Plaintiff in Error.

vs.

W. W. CASEY, HENRY SHATTUCK, and
ALLAN SHATTUCK,

Defendants in Error.

Writ of Error.

United States of America,—ss.

The President of the United States of America to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the Territory
of Alaska, Division Number One, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea, which is in
said District Court, Division Number One thereof,
before you, between Johanna Nelson as plaintiff,

and W. W. Casey, Henry Shattuck and Allan Shattuck as defendants, a manifest error hath happened, to the great prejudice and damage of the said Johanna Nelson, as is set forth and appears by the petition herein.

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this [28] writ, so as to have the same at said place and said circuit on or before thirty days from the date hereof, that the records and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 14th day of May, A. D. 1921.

Attest my hand and the seal of the District Court for the Territory of Alaska, Division Number One, at the clerk's office at Juneau on the day and year last above written.

[Seal]

J. W. BELL,

Clerk of the District Court for the Territory of Alaska, Division Number One.

Allowed this 14th day of May, A. D. 1921.

ROBERT W. JENNINGS,

District Judge.

Due service of the within and foregoing writ of error is acknowledged this 13th day of May, A. D. 1921.

H. L. FAULKNER,

Attorney for Defendants in Error.

Filed in the District Court, District of Alaska,
First Division. May 14, 1921. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [29]

United States Circuit Court of Appeals for the Ninth
Circuit, Holden at San Francisco, California.

No. 1977-A.

JOHANNA NELSON,

Plaintiff in Error,

vs.

W. W. CASEY, HENRY SHATTUCK, and
ALLAN SHATTUCK,

Defendants in Error.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
that we, Johanna Nelson, as principal, and John Reck,
as surety, are held and firmly bound unto the above
named defendants in error, W. W. Casey, Henry
Shattuck, and Allan Shattuck, in the sum of Two
Hundred and Fifty Dollars (\$250), for the payment
of which, well and truly to be made, we bind ourselves

and each of our heirs, executors and administrators, firmly by these presents.

The condition of this obligation is such that, whereas, the above-bounden Johanna Nelson has applied for an order granting a writ of error in the above-entitled cause from the United States Circuit Court of Appeals of the Ninth Circuit to the District Court of the Territory of Alaska, Division Number One, from a judgment entered in said cause on the 11th day of May, 1921;

NOW, THEREFORE, if the said writ of error shall issue and if the plaintiff in error shall prosecute her writ to effect, and answer all damages and costs, and if she shall fail to make her appeal good, then and in that case, this obligation shall be null and void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, we have set our hands and [30] seals this 13th day of May, A. D. 1921.

JOHANNA NELSON,
By HENRY RODEN, (Seal)
Her Attorney,
Principal.

JOHN RECK, (Seal)
Surety.

United States of America,
Territory of Alaska,—ss.

John Reck, being first duly sworn, deposes and says: That he is a resident of the city of Juneau, Alaska, over twenty-one years of age, and a banker by occupation; that he is worth the sum of Five Hundred Dollars (\$500) over and above his debts and liabilities and property exempt from execution; that he is

not a counsellor or attorney, marshal, clerk of any court or other officer of any court.

JOHN RECK.

Subscribed and sworn to before me this 13th day of May, 1921.

[Notarial Seal]

HENRY RODEN,

Notary Public in and for the Territory of Alaska.

My notarial commission expires July 24th, 1922.

The within bond is hereby approved.

ROBERT W. JENNINGS,

District Judge.

[Endorsed]: No. 1977-A. Bond on Appeal. Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy. [31]

United States Circuit Court of Appeals for the Ninth Circuit, Holden at San Francisco, California.

1977-A.

JOHANNA NELSON,

Plaintiff in Error,

vs.

W. W. CASEY, HENRY SHATTUCK, and AL-
LAN SHATTUCK,

Defendants in Error.

Citation on Writ of Error.

The President of the United States to W. W. Casey, Henry Shattuck and Allan Shattuck, the Above-named Defendants in Error, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty days from the date of this citation, pursuant to a writ of error filed in the clerk's office of the District Court for the Territory of Alaska, Division Number One, wherein Johanna Nelson is the plaintiff in error and you, W. W. Casey, Henry Shattuck and Allan Shattuck, are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 14th day of May, A. D. 1921, and of the Independence of the United States the 145th.

ROBERT W. JENNINGS,
District Judge.

Due and personal service of the foregoing citation is hereby admitted, this 13th day of May, A. D. 1921.

H. L. FAULKNER,
Attorney for Defendants in error.

Filed in the District Court, District of Alaska,
First Division. May 14, 1921. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [32]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1977-A.

JOHANNA NELSON,

Plaintiff,

vs.

W. W. CASEY, HENRY SHATTUCK, and AL-
LAN SHATTUCK,

Defendants.

Praeipice for Transcript of Record.

To Jay W. Bell, Clerk of the District Court, Division Number One, Territory of Alaska:

Kindly certify to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the following records of your office in the above-entitled case:

1. Complaint.
2. Demurrer to complaint.
3. Order sustaining demurrer to complaint.
4. Opinion of court on demurrer.
5. Amended complaint.
6. Demurrer to amended complaint.
7. Order sustaining demurrer to amended complaint.
8. Judgment.

9. Assignment of errors.
10. Order granting writ of error.
11. Writ of error.
12. Bond on appeal.
13. Original citation.
14. This praecipe.

RODEN & DAWES,
Attorneys for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. May 20, 1921. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [33]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to Tran-
script of Record.**

United States of America,
District of Alaska, Division No. I,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached thirty-three pages of typewritten matter, numbered from one to 33, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, prepared in accordance with the praecipe of plaintiff in error, in Cause No. 1977-A, on file in my office and made a part hereof, wherein Johanna Nelson is plaintiff and plaintiff in error and W. W. Casey, Henry Shattuck and Allen Shattuck are defendants and defendants in error.

I further certify that said record is by virtue of a writ of error and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to Fourteen and 70/100 Dollars (\$14.70) has been paid to me by attorneys for plaintiff in error.

In witness whereof I have hereunto set my hand and the seal of the above-entitled court this 23d day of May, 1921.

[Seal]

J. W. BELL,
Clerk.

By L. E. Spray,
Deputy.

[Endorsed]: No. 3698. United States Circuit Court of Appeals for the Ninth Circuit. Johanna Nelson, Plaintiff in Error, vs. W. W. Casey, Henry Shattuck and Allen Shattuck, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed June 9, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.